

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DAVID HALTERMAN,

NO. C 04-02660 JW

Plaintiff,

**ORDER VACATING MAGISTRATE  
JUDGE TRUMBULL'S ORDER  
GRANTING MOTION TO COMPEL;  
NOTICE OF INTENT TO APPOINT A  
SPECIAL MASTER;  
ORDER SCHEDULING FURTHER CASE  
MANAGEMENT CONFERENCE**

v.

EMC CORPORATION, et al.,

Defendants.

I. INTRODUCTION

Defendants Legato Software ("Legato") and EMC Corporation ("EMC," collectively "Defendants") object to Magistrate Judge Trumbull's October 14, 2005 order granting Plaintiff's motion to compel (Docket No. 144, hereinafter, "Discovery Order"), and have moved for de novo determination of the issue by this Court. The Court held a hearing on this issue on December 5, 2005. Based on the papers filed, and the arguments of counsel at the hearing, this Court vacates the Discovery Order insofar as it pertains to the production of electronic records contained in EMC's Oracle database and appoints a special master to address the issues raised by the parties in Defendants' objections to the Discovery Order.

II. BACKGROUND

Plaintiff David Halterman alleges that Defendants wrongfully terminated him because he "blew the whistle" on Defendants' accounting and financial data. Mr. Halterman claims that he uncovered negative financial information regarding Legato's software renewal rates that undermined Legato's public filings at a time when EMC was in negotiations with Legato to purchase Legato. Plaintiffs sought electronic data

responsive to their discovery requests. Magistrate Judge Trumbull granted Plaintiff's motion to compel, and ordered: "Defendant shall either produce to Plaintiff a copy of, or allow Plaintiff access to the original of, all electronic data responsive to these requests. For purposes of these requests, the customer sales information in Defendant's Oracle database is deemed to be responsive to the request for data that 'demonstrates' Defendant's renewal rates." (Discovery Order at 1-2). Defendants filed their objections with this Court on October 28, 2005.

### III. STANDARDS

The scope of discovery may be limited if "the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issue at stake in the litigation, and the importance of the proposed discovery in resolving the issues." FED. R. CIV. P. 26(b)(2). For nondispositive matters such as discovery issues, "the district judge to whom the case is assigned shall consider such objections and shall modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law." FED. R. CIV. P. 72(a).

### IV. DISCUSSION

#### A. Notice of Appointment

Due to the number of parties in this lawsuit, the complexity of legal and factual issues involved in this lawsuit, and the cost savings to the parties which will result from a more focused management of pre-trial matters, this Court concludes that the appointment of a Special Master in this lawsuit would be beneficial to all. Pursuant to FED. R. CIV. P. 53, then, this Court notifies the parties of its intent to appoint George C. Fisher, 1717 Embarcadero Road, Palo Alto, CA 94303, (650) 857-1717, as the Special Master of this lawsuit. The Court discloses to the parties that Mr. Fisher's firm, Dorsey and Whitney, represents EMC Ireland in tax litigation proceeding in London. EMC Ireland, may be a subsidiary of EMC. Mr. Fisher has represented to this Court that he has not been involved in the EMC Ireland case.

Mr. Fisher would be the Special Master for all proceedings, with the power to hear and make reports and recommendations on the issues arising out of Defendants' objections to Magistrate Judge

1 Trumbull's Order granting Plaintiff's motion to compel. The Special Master shall take into account this  
2 Court's findings on the present issue, infra.

3 The Special Master shall exercise the power necessary or proper to regulate all proceedings before  
4 him and shall do all acts and take all measures necessary or proper for the efficient performance of his  
5 duties under this order. Unless this Court receives a recommendation from the Special Master for some  
6 other apportionment, each party shall bear the cost of the Special Master on a per capita basis, payable in  
7 advance. The Special Master shall report to this Court on a periodic basis regarding the state of his fees  
8 and expenses. Unless otherwise ordered, the Special Master shall, in his report, advise this Court, without  
9 specifically identifying parties, as to whether the parties are current in their payment of his fees and  
10 expenses.

11 The Special Master shall file numbered interim reports or recommendations which: 1) advise this  
12 Court of the status of the case, and 2) recommend the disposition of any matter heard by him. The parties  
13 shall have ten (10) days from the date an interim report or recommendation is filed to file any objections.  
14 Any party opposing the objection(s) shall file an opposition within ten (10) days after the objection is filed.  
15 If no objection is filed, the Special Master's report or recommendation shall become a binding Order of this  
16 Court and the parties shall comply with the Order. If, however, an objection is filed, the matter shall be  
17 deemed submitted to this Court without oral argument twenty (20) days after the Special Master's report or  
18 recommendation is filed--unless an application is made and this Court orders the matter to be scheduled for  
19 hearing. Reports or recommendations pertaining to non-dispositive motions or pretrial discovery matters  
20 shall be reconsidered by this Court only where the Special Master's report or recommendation is clearly  
21 erroneous or contrary to law.

22 The parties shall have ten days from the date of this notice to file any objections to Mr. Fisher being  
23 named as Special Master. If no objection is filed and if Mr. Fisher files the affidavit required by FED. R.  
24 Civ. P. 53(b)(3), this Court's appointment of Mr. Fisher as Special Master shall become effective twelve  
25 days after the date of this notice.

1 B. The Present Issue

2 Magistrate Judge Trumbull ordered Defendants to produce the customer sales information in  
3 Defendants' Oracle database. Defendants argue that the entire customer sales database is not relevant to  
4 the suit at hand. In particular, Defendants contend that only the information that Plaintiff actually had before  
5 him is relevant for the purposes of a wrongful termination lawsuit based on whistleblowing. This Court  
6 notes that it is Defendants who have raised the defense that Plaintiff was factually incorrect in making his  
7 whistleblowing claim. To the extent that Defendants intend on continuing to raise this defense, Defendants  
8 are required to provide to Plaintiffs the information on which they base their defense, so far as practicable  
9 and economically feasible. For example, if Defendants do not rely on the entire customer sales database  
10 for any defense, it is likely that the entire customer sales database does not need to be provided to Plaintiff.  
11 The Special Master shall determine, on a case by case basis, the information which is discoverable under  
12 this standard.

13 Defendants also take issue with Magistrate Judge Trumbull's statement: "The Court is confident  
14 Defendant will have no trouble copying the databases, given the information on Defendant's website  
15 regarding the ease and speed with which its software can backup and restore Oracle databases."  
16 Defendants argue that this statement is an abuse of discretion because the ability to copy databases into a  
17 readable form is different from the ability to backup or restore a database. In support of their argument,  
18 Defendants submit the declaration of Matthew Lawrence, EMC's director of IT who states that it is not  
19 practically possible to give Plaintiff access to Legato's databases. Defendants also claim that "for EMC to  
20 produce the information ordered by this Court could cost about \$500,000," which would be more than the  
21 actual damages claimed by Plaintiff. (Def. Obj., Docket No. 159 at 14-15.) Plaintiffs contend that EMC,  
22 as the self-proclaimed "world leader" in "information storage and its management" should be able to  
23 produce the twelve or so gigabytes of information sought without much effort at all. This Court reserves the  
24 issue of burdensomeness for the Special Master to examine.

1 C. Further Case Management Conference

2 As a final matter, this Court schedules a further case management conference for Monday, January  
3 23, 2005 at 10:00 a.m. Prior to this conference, and pursuant to Civil L.R. 16-10, the parties shall meet  
4 and confer in good faith to develop a Joint Case Management Statement. The parties shall file their  
5 statement on or before January 13, 2005.

6 IT IS SO ORDERED

7  
8 Dated: December \_\_\_\_, 2005

9 04eciv2660spmaster

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JAMES WARE  
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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**Dated: December \_\_, 2005**

**Richard W. Wieking, Clerk**

**By: /s/ JW Chambers  
Ronald L. Davis  
Courtroom Deputy**